

## SUBCOMMITTEE NO. 2

## Agenda

S. Joseph Simitian, Chair  
Alan Lowenthal  
John J. Benoit



Thursday, May 7, 2009  
10:00 a.m.  
Room 2040

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### Resources—Environmental Protection—Energy—Transportation

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## Vote-Only Calendar

### Spring Finance Letters

The Governor has submitted a series of spring finance letters which deal with technical changes to the budget and additions of funding for emergencies. The letters are listed in the chart below.

Department	Proposal	2009-10 Amount (000)
Department of Water Resources	Salton Sea Conservation Implementation: Increase reimbursements to support the Salton Sea restoration, mitigation, and monitoring activities.	\$ 8,000
Department of Water Resources	Groundwater Storage Grant Program: Funds to pay for two Groundwater Storage Grant Program contracts were reverted even though the work was completed and no payments were made. These funds will allow the contracts to be paid. Funding comes from the Conjunctive Use Subaccount for bond funds.	\$ 218
Department of Water Resources	Floodplain Mapping: Federal funds to continue floodplain mapping in California.	\$ 5,320
Department of Water Resources	Supervision of Safety of Dams: Additional funds from the Dam Safety Fund for installation of strong motion instruments on high hazard dams and for reconvening the Earthquake Analysis Board.	\$ 300
Department of Water Resources	Delta Fishery Improvements: State Water Project Funds: four positions to evaluate cost-effective fish facility improvement alternatives for the State Water Project.	\$ 800
Department of Water Resources	Delta Fish Agreement 2008 Amendment: State Water Project Funds: four permanent positions and one temporary position to implement mitigation measures for Delta smelt, longfin smelt, and salmon as required by the Delta Fish Agreement 2008 amendment. These activities will comply with federal permit requirements.	\$ 735
Department of Water Resources	South Sacramento County Streams: Increased bond funds (\$4.2 million) and reimbursements (\$1.7 million) to continue construction of the South Sacramento County Streams project.	\$ 6,000
Department of Water Resources	Reappropriations of Capital Outlay Projects: General fund funded capital outlay projects. These projects were started prior to the passage of the 2006 bonds, and thus those bond funds cannot be used to pay for them.	\$ 4,393
Department of Water Resources	Extension of Liquidation: For one year on the Merced County Streams project, which is funded from General Fund.	
Department of Water Resources	Reappropriations, Extensions of Liquidation, and Technical Adjustment of CALFED funds. From various bond fund sources. Extensions are for one year. These funds are for both state operations and local assistance.	

Department	Proposal	2009-10 Amount (000)
Department of Water Resources	Reappropriations, Extensions of Liquidation, and Technical Adjustment of Non-CALFED funds. From various bond fund sources. Extensions are for one year. These funds are for both state operations and local assistance.	
Department of Water Resources	Reversions: Proposition 13 and Proposition 50 reversions necessary to maintain expenditures within the amounts authorized in various bond allocations.	
Department of Water Resources	Technical Adjustments: Correct the continuation of a \$869,000 limited-term appropriation into the 2009-10 Budget Act. Also, shift \$570,000 reduction from data collection to flood management to reflect the program reduced accurately.	-\$869
State Water Resources Control Board	Reversion of Proposition 40 and Proposition 50 bond funds from projects completed under budget.	-\$645
Food and Agriculture	Asian Citrus Psyllid Project: \$1 million in federal funds and 2 temporary positions to detect and eradicate a new agricultural pest.	\$1,000

**Staff Recommendation:** Staff recommends that the Subcommittee approve the finance letters shown in the chart.

## 3360 Energy Resources Commission

### 1. West Coast Regional Carbon Sequestration Partnership

**WESTCARB.** The WESTCARB project aims to demonstrate a California-based zero-emissions power plant by applying a new and innovative carbon sequestration technology. The advanced generation technology being used for WESTCARB provides a generation system that produces only carbon dioxide and water as by-products. If the carbon sequestration technology proves effective, the technology may be tested with other greenhouse gasses such as NO<sub>x</sub> and SO<sub>x</sub>.

The first two phases of the project have been completed. These phases involved evaluation and research. The first two phases totaled \$11.4 million in grants and were managed by contractors. The third phase of the project received \$65.5 million in federal funds, and will end in 2018.

**Governor's Budget.** The Governor's Budget proposes a total of \$10,220,000 and five positions for phase III of the WESTCARB project.

The proposed staff will be used in the advance generation carbon capture and sequestration research area to develop, award, and manage the contracts and provide broad outreach on the results of the research.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal.

## 2. Siting Renewable Generation

**Renewable Portfolio Standard.** Current statute requires that electricity providers obtain a minimum of 20 percent of their energy from renewable sources of energy by 2010. The Governor's Executive Order S-14-18 increases this goal to 33 percent by 2020. Currently, renewable energy generation only comprises about 12 percent of electrical sales in California.

**Transmission Lines.** Many of California's renewable energy developments are likely to happen in remote areas, which will require new transmission lines to get the energy to distribution centers. Renewable generation and renewable transmission lines have many of the same siting constraints as fossil fuel plants, including land use conflicts, community concerns over project location, biological and cultural resource impacts, and visual concerns. Historically, the planning, permitting, and construction of transmission projects has taken up to ten years to complete.

**Governor's Budget.** The Governor's Budget proposes \$2,589,000 from the Energy Resources Programs Account and 10 positions to work on accelerating transmission projects to meet the Renewable Portfolio Standard. Of the amount requested, \$1,225,000 is for contract funds to have the Department of Fish and Game complete environmental work.

These new resources would be used to:

1. Work with the Department of Fish and Game to develop a Natural Community Conservation Plan for the Mojave and Colorado deserts that will facilitate the development of renewable resources and to identify sites for solar development in the California desert to facilitate the development of solar power plants;
2. Assist the Federal Bureau of Land Management (BLM) in the development of the Solar Programmatic Environmental Impact Statement; and
3. Develop Best Management Practices to facilitate solar development while minimizing environmental impacts.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the budget proposal.

## 3. Siting Program Workload Requirements

**Renewable Portfolio Standard.** Current statute requires that electricity providers obtain a minimum of 20 percent of their energy from renewable sources of energy by 2010. The

Governor's Executive Order S-14-18 increases this goal to 33 percent by 2020. The renewable portfolio standard (RPS) is driving the planning for many new renewable energy projects.

**Siting Applications.** The Energy Commission's siting workload has been steadily increasing for the last ten years. During the 1990s, the average number of siting applications for new power plants was five to six annually. During March 2009, the Energy Commission had 25 applications under review. Due to staffing limitations, the Energy Commission is able to review only about half of the applications it receives during the statutory 12-month review period.

**Baseline Budget.** The *2009-10 Budget Act* includes 80 positions for the Siting, Transmission, and Environmental Protection Division, which handles power plant siting. Approximately 65 of these positions directly work on siting, while the other 15 work on programs such as the Renewable Energy Transmission Initiative (RETI).

**Fee Structure.** Currently, fossil fuel power plants pay a siting application fee of \$132,154 plus \$329 for each megawatt to be generated. The fee cannot exceed \$350,000. Current statute states that no fees can be charged from siting applications for renewable energy power plants.

**Finance Letter.** The Governor submitted a finance letter requesting \$2,339,000 from the Energy Resources Program Account for 18 positions to process power plant siting applications in a timely manner.

**Staff Comment.** The workload for new applications is being driven largely by renewable energy power plants. However, no application fee can be charged from renewable energy applicants. Therefore, if the Subcommittee were to consider raising the application fee to cover increased costs, the funds would come from fossil fuel energy generators, who are not driving the majority of the increased workload.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the budget proposal.

## 3860 Department of Water Resources

### 4. Bay-Delta Modeling, Reporting, Review, and Support

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP.

**Governor's Budget.** The Governor's Budget proposes five permanent positions for \$936,000 from State Water Project funds to support and enhance modeling tools used by DWR for planning and management of the state's water resources system. Specifically, the positions would be for:

1. Development, maintenance, and application of the currently unsupported Particle Tracking Model (PTM) – one position

2. Development of the State Water Project Delivery Reliability Report – one position
3. Development of new tools to analyze complex Delta hydrodynamic, water quality, and statewide surface water and groundwater modeling results – one position
4. Clerical support for the Administrative Section – one position
5. Multi-Dimensional Modeling Support – one position

**LAO Recommendation.** The LAO recommends that the budget request be denied. The LAO notes that the department has said this modeling activity is increasingly important to its work. However, there is no proposal to redirect funding to this activity from other programs to reflect its higher-priority status. Over the past several years, the division which carries out this modeling work has increased by 19 staff and \$80 million. While this activity may have merit in concept, the LAO recommends that the department fund these activities out of existing resources by redirecting funding from lower-priority activities.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal.

## 5. Transfer of Operations and Maintenance of Sixteen Flow Monitoring Stations in the Delta

**Flow Monitoring Stations.** The Department of Water Resources has sixteen continuous flow monitoring stations in the Sacramento-San Joaquin Delta. These stations are currently being operated and maintained by the United States Geologic Survey (USGS) under two contracts that will expire in December 2009. The USGS charges DWR approximately \$80,000 per station annually to monitor the flow stations, but DWR estimates it could monitor the flow stations in-house for only \$45,000 per station annually.

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP.

**Governor's Budget.** The Governor's budget proposed four new permanent positions to monitor continuous flow stations in the Bay-Delta. The positions would be paid for with State Water Project funds and would lead to a savings of \$560,000 annually over the USGS contracts.

**LAO Recommendation.** The LAO recommends that this proposal be rejected, because there is merit to maintaining independent monitoring by USGS of water quality and flow monitoring stations in the Delta. As the state's Delta policy continues to evolve over the next few years, potentially fundamentally affecting SWP operations, having independent monitoring could become increasingly important. The LAO therefore recommends that the Legislature direct the department to extend its current contract with USGS to provide this information.

**Staff Recommendation.** Staff recommends that the Subcommittee reject the requested positions.

## 6. State Water Project Management Group

**SWP Management Group.** The Department of Water Resources (DWR) established a methodology to deal with all State Water Project (SWP) fiscal analysis. This methodology was intended to provide a consistent means and documentation process for initiating, approving, financing, and managing SWP programs in a centralized manner. To manage this control effort, 24 existing SWP employees were used to form a management group within the State Water Project Analysis Office (SWPAO).

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP.

**Governor's Budget.** The Governor's January 10 Budget proposed nine new permanent positions for the SWP Analysis Office. The estimated cost of these positions is \$1,544,000 from SWP funds.

**LAO Recommendation.** The LAO notes that at least 17 positions related to SWP administration, legal review, and protest resolution have been added to the existing base budget for these activities in the past three years. Moreover, it is unclear why the 50-year old program requires, at this time, a new central program management group. As the budget request has not been justified, the LAO recommends that it be denied.

**Staff Recommendation.** Staff recommends that the Subcommittee reject this proposal.

## 7. Critical Support for the Department of Water Resources

**Position Request.** The Department of Water Resources (DWR) requested 26 new permanent positions and four temporary positions to provide administrative support to the department as it takes on additional work-load for flood management and levee repairs, information technology needs, and State Water Project operations and financing. The DWR staffing level has changed from 2,549 positions in 2003-04 to 3,163 positions in 2008-09, but the administrative overhead support increased by five positions during the same time period.

**Budget Act.** The *2009-10 Budget Act* includes \$427,000 from special funds for new staff at the DWR. The Budget Act does not include new staff for the SWP, which was requested at \$2,738,000 in State Water Project funds. The new positions are divided as follows:

- Payroll and Benefits – 5 positions
- Selection Services Unit – 3 positions
- Labor Relations Office – 1 position
- Procurement and Contracting Office – 3 positions
- Facilities Management Office – \$896,000 additional funds for CHP security contract
- Division of Technology Services – 14 positions

**LAO Recommendation.** SWP has already received additional administrative positions in recent years. The LAO finds that the request for further additional administrative positions has not been justified, and therefore recommend denying this component of the budget request.

**Staff Recommendation.** Staff recommends that the Subcommittee reject the SWP positions requested.

## 8. State Water Project Facilities Fish and Wildlife Enhancement and Recreation

**Davis-Dolwig Act.** Chapter 867, Statutes of 1961 (AB 261, Davis), also known as the Davis-Dolwig Act, states the broad intent of the Legislature was that State Water Project (SWP) facilities be constructed “in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs.” The Department of Water Resources (DWR) is charged with implementing the act as part of planning for construction of SWP facilities. The Davis-Dolwig Act does not provide criteria specifying what kinds of recreation facilities or fish and wildlife enhancements are to be developed, nor does it require legislative review or approval of such facilities or enhancements.

**DWR has Authority to Determine Cost-Share.** DWR determines what share of the costs of SWP facilities relate to fish and wildlife enhancements and recreation and are Davis-Dolwig costs not subject to reimbursement by state water contractors. There are two primary costs under the Davis-Dolwig Act. First is the capital cost of the creation of recreation facilities when the SWP was constructed (such as the purchase of additional land for hiking trails and camping). The second is an allocation to recreation of the total annual budget of the overall SWP, based on an assessment of each facility’s value as a recreational asset.

**Budget Act.** The *2009-10 Budget Act* includes no funds for the SWP facilities fish and wildlife enhancement and recreation.

**Governor’s Budget.** The Governor’s Budget proposed a total of \$38.5 million for Davis-Dolwig related costs. These were:

- \$30,984,000 from Proposition 84 for development, rehabilitation, acquisition, and restoration of SWP facilities for fish and wildlife enhancement and recreation.
- \$7.5 million from Harbors and Watercraft Fund for on-going operations funding for SWP recreation.
- Trailer bill language.

**Trailer Bill.** The Governor proposed trailer bill language to provide a continuously appropriated annual transfer of \$7.5 million from the Harbors and Watercraft Fund for payment of the recreation component of the SWP. This \$7.5 million would pay for on-going operations of SWP recreation, but would become “off-budget” and not subject to Legislative appropriation each



year. The trailer bill language also includes an annual reporting requirement on what the funds were used for during the previous budget year.

**Staff Recommendation.** Staff recommends that the Subcommittee reject this proposal for funding recreational projects in order to provide the policy process an additional year to resolve the matter.

## 8570 Department of Food and Agriculture

### 9. Senior Farmers' Market Nutrition Program

**Background.** The Senior Farmers' Market Nutrition Program used to be located at the California Department of Aging. This program provides low-income senior citizens with nutrition information about the health benefits of eating five servings of fruits and vegetables a day and \$20 coupon books to purchase fresh fruits, vegetables, and herbs at California's Certified Farmers' Markets.

The California Department of Food and Agriculture (CDFA) will use the 10 percent available within the federal grant to support the administrative costs associated with the program. The California Department of Aging Area Agencies on Aging will administer the program at the local level, as they did when the California Department of Aging ran this program.

**Previous Budget Action.** The 2008-09 fiscal year Budget Balancing Reductions eliminated this program at the California Department of Aging, where it was funded with General Fund.

**Budget Act.** The *2009-10 Budget Act* includes \$810,000 from federal funds to establish the Senior Farmers' Market Nutrition Program at the CDFA.

**Staff Comment.** The federal government expressed to CDFA officials that if no California department takes on the administration of the Senior Farmers' Market Nutrition Program, the federal government will distribute California's share of the funds to other states and California would be shut out of the program indefinitely. The benefit of this program outweighs the costs since this program serves low-income seniors who may be reliant on the coupons for their monthly food supply and only federal funds would be used to run the program.

The CDFA certifies all California farmers' markets and thus has knowledge of where transactions can take place. Thirty-three of the fifty-eight Area Agencies on Aging have expressed willingness to participate in the program.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal.

## 8660 Public Utilities Commission

### 10. Renewable Portfolio Standard and Renewable Transmission

**Renewable Portfolio Standard.** Current statute requires that electricity providers obtain a minimum of 20 percent of their energy from renewable sources of energy by 2010. The Governor's Executive Order S-14-18 increases this goal to 33 percent by 2020. Legislation is currently being debated by the Legislature that would codify the 33 percent renewable portfolio standard (RPS).

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Governor's Budget.** The Governor's Budget proposes \$322,000 from the Public Utilities Commission Utilities Reimbursement Account and three positions to implement the 33 percent renewable portfolio standard.

**Department Tasks.** With these positions, the PUC would:

1. Design and implement policy needed for a 33 percent RPS by 2020 target, in addition to the 20% to 2010 mandate.
2. Identify the least-cost best-fit renewable resources required to achieve a 33 percent RPS.
3. Identify the project-specific barriers that prevent the renewable developers from building sufficient renewable generation to achieve a 33 percent RPS.
4. Develop a detailed implementation workplan that will address the project-specific barriers.
5. Work with multiple agencies (Energy Commission, CAISO, and the California Air Resources Board) and stakeholders (e.g., renewable developers, local governments, and environmentalists) to ensure successful implementation of a 33 percent RPS workplan.
6. Analyze the cost and rate impact of a 33 percent RPS.
7. Evaluate the increased number of transmission siting filings due to the identification of approximately 35,000 Megawatts of solar generation capacity by the U.S. Bureau of Land Management.
8. Coordinate specific transmission siting filings with potential corridor designations through California Energy Commission studies.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal.

## Discussion Items

### 3940 State Water Resources Control Board

**Background.** The State Water Resources Control Board (SWRCB), in conjunction with nine semi-autonomous regional boards, regulates water quality in the state. The regional boards—which are funded by the state board and are under the state board's oversight—implement water quality programs in accordance with policies, plans, and standards developed by the state board.

The board carries out its water quality responsibilities by: (1) establishing wastewater discharge policies and standards; (2) implementing programs to ensure that the waters of the state are not contaminated by underground or aboveground tanks; and (3) administering state and federal loans and grants to local governments for the construction of wastewater treatment, water reclamation, and storm drainage facilities. Waste discharge permits are issued and enforced mainly by the regional boards, although the state board issues some permits and initiates enforcement actions when deemed necessary.

The state board also administers water rights in the state. It does this by issuing and reviewing permits and licenses to applicants who wish to take water from the state's streams, rivers, and lakes.

**Budget Act.** The *2009-10 Budget Act* includes \$598.6 million to support the SWRCB. This proposal is approximately \$178 million less than current year expenditure levels, mainly due to a reduction in bond funding. General Fund appropriation is expected to stay nearly the same.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	2008-09	2009-10	\$ Change	% Change
<b>Type of Expenditure</b>				
Water Quality	\$ 765,487	\$ 586,951	-\$178,536	-23.3
Water Rights	11,894	11,658	-236	-2.0
Administration	21,097	21,141	44	0.2
<i>less distributed administration</i>	<i>-21,097</i>	<i>-21,141</i>	<i>-44</i>	<i>0.2</i>
<b>Total</b>	<b>\$ 777,381</b>	<b>\$ 598,609</b>	<b>-\$178,772</b>	<b>-23.0</b>
<b>Funding Source</b>				
General Fund	\$ 40,283	\$ 40,575	\$ 292	0.7
Special Funds	378,822	364,874	-13,948	-3.7
Bond Funds	178,217	7,395	-170,822	-95.9
<i>Budget Act Total</i>	<i>597,322</i>	<i>412,844</i>	<i>-184,478</i>	<i>-30.9</i>
Federal Trust Fund	128,470	128,975	505	0.4
Reimbursements	6,198	8,062	1,864	30.1
State Water Quality Control Fund	27,723	31,078	3,355	12.1
State Water Pollution Control Revolving Fund	5,532	5,532	-	0.0
Petroleum Underground Storage Tank Financing Account	12,136	12,118	-18	-0.2
<b>Total</b>	<b>\$ 777,381</b>	<b>\$ 598,609</b>	<b>-\$178,772</b>	<b>-23.0</b>

## 1. Federal Funds for Wastewater

**ARRA Funding for Wastewater.** The American Recovery and Reinvestment Act (ARRA) includes about \$283 million provided directly to California in grant and loan funding (including for loan forgiveness and “negative–interest rate” loans) for wastewater infrastructure, through the existing Clean Water State Revolving fund (negative–interest rate loans have a zero interest rate and some degree of forgiveness of the loan principal, effectively making the interest rate negative). The funds will all be made available in FFY 2008–09. The State Water Resources Control Board (Water Board) administers the program on behalf of the state in cooperation with the U.S. Environmental Protection Agency (U.S. EPA).

**ARRA Requirements.** The ARRA required that the state change its existing program in two ways. First, the current state matching fund requirement is waived as a condition of receiving the federal economic stimulus monies. Second, the federal authorization expressly includes three forms of financial assistance - grants, loan forgiveness, and negative-interest rate loans - that are expressly prohibited under state law for the Clean Water SRF program.

**SBX3 27.** SB X3 27 (Negrete McLeod, Carter et al), Chapter 25 statutes of 2009-10, made various changes to state law needed to expedite the expenditure of federal funds under the ARRA for water quality projects. While this bill was moving through the legislative process, the Water Board adopted guidelines for how it would expend the funds. The Water Board decided that it would provide grants for projects within disadvantaged communities while urban districts would be able to access very low or zero interest loans for their. Below are the allocations approved by the Water Board for the \$283 million in ARRA funds:

1. \$70 million for grants for disadvantaged communities
2. \$70 million to restart stalled bond projects.
3. \$60 million for 0% interest loans for innovative projects (e.g. water recycling).
4. \$80 million for 1% interest loans for any agency.

**Staff Comment.** Some urban water agencies have objected to the Water Board's adopted guidelines to allocate ARRA funds, because they would limit grants to districts with disadvantaged communities in areas of low population density. One concern is that low income communities in urbanized areas would not have access to grants because they do not qualify as "disadvantaged communities" as defined by the regulations due to population levels. Additionally, urban districts are concerned that by funding infrastructure projects through loans rather than grants will ultimately increase rates for ratepayers as funds are needed to pay back loans.

On April 16th, the Speaker of the Assembly and the Senate President pro Tempore sent a letter to the Water Board stating a shared concern that economically challenged communities in both rural and urban parts of the state will not have equal access to these funds under the adopted regulations. At the hearing, the Water Board should be prepared to discuss whether changes have been made to these regulations and what options the Legislature could consider that would address these concerns.

## 2. Underground Storage Tank Funding Brownfield Initiative

**Background.** The Underground Storage Tank Cleanup Fund (USTCF) acts as an insurance program for Underground Storage Tank (UST) operators. The USTCF provides up to \$1.5 million in reimbursements per occurrence to petroleum UST owners and operators to fix leaks in USTs. Funds for the USTCF come from a fee of \$0.014 per gallon of petroleum per gallon stored.

Since 1992 the USTCF has received 19,000 claims, 11,000 of which received letters of commitment. The claimants include individuals, small businesses, local governments, and major corporations. Statute mandates a priority system where individuals and small businesses have

their claims addressed first. As of June 2008, the department had over 3,400 claims that are over five years old.

**Governor's Budget.** The Governor's Budget proposes \$719,000 from the Underground Storage Tank Cleanup Fund and five temporary positions to review claims that have been active for more than five years.

**Budget Act.** The *2009-10 Budget Act* did not fund the Governor's Budget request of \$719,000 for five temporary positions.

**Finance Letter.** The Governor submitted a finance letter proposing two fund transfers from the Underground Storage Tank Cleanup Fund (USTCF) and trailer bill language:

1. \$10 million to the School District Account in the USTCF
2. \$20 million to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund

**Trailer Bill Language.** The Governor's finance letter also includes trailer bill language creating the School District Account within the USTCF.

**Staff Analysis.** The current fee for the USTCF is set at \$0.0014 and generates approximately \$250 million annually. The fund acts as a form of insurance against environmental cleanup costs for underground storage tank owners. However, the fund is currently over subscribed, meaning expenditures are outpacing revenues. Many of the expenditures are set in statute as transfers to subaccounts within the USTCF. As a result of the fund condition, many claims are going unresolved for five years or longer.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal and the spring Finance Letter. Staff also recommends that the Subcommittee adopt trailer bill language in concept that would:

1. Augment the current fee by six-tenths of one cent (\$0.006)
2. Use two-tenths of one cent (\$0.002) of this augmentation to fund unresolved claims
3. Cap the fee augmentation to scale down to two-tenths of one cent (\$0.002) if the price of gasoline rises to \$3.00 per gallon, and to zero if the price of gasoline rises to \$3.50 per gallon.

### 3. Methyl Mercury in Wetlands

**Mercury.** Mercury is a rare, dense metal, slightly more common than gold in the earth's crust. It has unusual properties that have made it valuable in metallurgy, electrical systems, and chemical processes. It is a liquid at ordinary temperatures and evaporates when exposed to the atmosphere. Environmental mercury contamination concerns in California are focused less on atmospheric sources, and more on aquatic sources for several natural and historic reasons. During the Gold Rush era more than 220,000,000 pounds of elemental mercury were produced in California. There were few controls on the dispersion of mercury from these operations, leading

to significant increases in environmental mercury concentrations in affected soil, sediment, plants, fish, and other animals.

**Methyl Mercury.** Of even greater environmental concern is the presence of methyl mercury, an organic form of mercury that is a potent neurotoxin and is especially detrimental to developing fetuses and young children (less than about 6 years old). Methyl mercury accumulates and biomagnifies in the food chain, reaching highest concentrations in predatory fish, many of which are prized by sports fishermen. Numerous water bodies in California have fish-consumption advisories because of mercury contamination from historical mining. Several of these advisories are based on data collected by the United States Geological Survey (USGS), including those in Trinity County, and the Bear, Yuba, and American River watersheds in the Sierra Nevada.

**Role of Wetlands.** Mercury from hydraulic and placer mining for gold has been transported with sediments downstream into the San Francisco Bay/Sacramento-San Joaquin Delta estuary, where it has likely contributed to elevated mercury concentrations in fish, resulting in consumption advisories. The USGS reports that the sedimentary supply of mercury to the Delta and in Delta sediments (cinnabar, metacinnabar, and elemental Hg) typically are insoluble, but will pose an environmental hazard if they are (1) solubilized and (2) methylated in Delta and Estuary wetlands.

**Budget Act.** The *2009-10 Budget Act* includes \$2.3 million in Proposition 13 bond funds for the Department of Water Resources to reduce methyl mercury in abandoned mines in the Delta. The funds include support for a best management practices study that would reduce methyl mercury from the Yolo Basin and other wetlands.

Also, the Central Valley Regional Water Board is currently creating the Total Maximum Daily Load (TMDL) requirements for mercury. These requirements will impact how mercury is treated for in the water supply.

**Staff Comment.** The Department of Water Resources is focused on water supply issues while the State Water Resources Control Board works on water quality issues. To gain perspective on the impact of mercury in wetlands that stay wet year round, it may be beneficial to have the Water Board conduct additional testing on water quality, as well as to establish best management practices in the development of new wetlands, including pre- and post-monitoring for new wetlands projects.

## 4. Water Rights Program

**Water Rights Based on Priorities.** Water rights are based on a priority system that is used to determine who can continue taking water when there is not enough water to supply all needs. Those with high priority rights know that they are likely to receive water. Those with low priority rights know that they may not receive water in all years and can plan accordingly.

**Riparian Water Rights.** A riparian water right is a right to use the natural flow of water on riparian land. Riparian land is land that touches a lake, river, stream, or creek. California is the

only western state that continues to recognize riparian rights. The California Legislature has enacted very few laws regarding riparian rights. As a result, riparian rights have been frequently litigated. As a result of these lawsuits, the courts have clarified rules that apply to riparian rights. If there is not enough water available for competing riparian users, they must share the available supply according to their needs. Generally in this situation, water used for interior domestic purposes, such as drinking, cooking, and bathing, has the highest priority.

**Water Right Permits.** Water right permits include conditions to protect other water users and the environment. The State Water Resources Control Board (Water Board) has continuing authority over permits that it issues, and it can modify permits and licenses it previously issued to require more protective conditions. The Water Board must provide the permit or license holder with notice and opportunity for a hearing before making changes. If the permit holder disagrees with the Water Board's decision to modify the permit, it can ask the court to review the matter.

**Water Rights Administration.** Water rights law is administered by the Water Board. Within the Water Board, the Division of Water Rights acts on behalf of the Water Board for day-to-day administrative matters. The Water Board is the only agency with authority to administer water rights in California.

**Staff Recommendation.** Staff recommends that the Subcommittee approve Supplemental Report Language requiring:

On or before March 30, 2010, the State Water Resources (SWRCB) shall submit a report to the Joint Legislative Budget Committee (JLBC) and relevant policy committees that provides recommendations for creating greater efficiency in administering and enforcing water rights in the state. The report shall include a cost estimate for implementation of the recommendations.



## 3860 Department of Water Resources

**Background.** The Department of Water Resources (DWR) protects and manages California's water resources. In this capacity, the department maintains the State Water Resources Development System, including the State Water Project. The department also maintains public safety and prevents damage through flood control operations, supervision of dams, and water projects. The department is also a major implementing agency for the CALFED Bay-Delta Program, which is putting in place a long-term solution to water supply reliability, water quality, flood control, and fish and wildlife problems in the San Francisco Bay Delta.

Additionally, the department's California Energy Resources Scheduling (CERS) division manages billions of dollars of long-term electricity contracts. The CERS division was created in 2001 during the state's energy crisis to procure electricity on behalf of the state's three largest investor-owned utilities (IOUs). The CERS division continues to be financially responsible for the long-term contracts entered into by the department. (Funding for the contracts comes from ratepayer-supported bonds.) However, the IOUs manage receipt and delivery of the energy procured by the contracts. (More on the CERS division of DWR is included in the Energy and Utilities section of this report.)

**Budget Act.** The *2009-10 Budget Act* includes \$6.3 billion to support DWR. This is a 20 percent decrease over estimated expenditures in the current year, mainly the result of a decrease in capital outlay and California Energy Resources Scheduling (CERS) funding. General Fund support for the department is proposed to decrease by nearly 20 percent. The \$4.3 billion in CERS funding is not subject to the Budget Act (these funds are primarily for energy payments related to the 2001 electricity crisis). The CERS funds will significantly decrease in 2012 as the majority of the power contracts are paid off.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
California Water Plan	\$ 848,513	\$ 150,139	-\$698,374	-82.3
Implementation of the State Water Resources Development System	861,730	903,861	42,131	4.9
Public Safety and Prevention of Damage	896,695	436,090	-460,605	-51.4
Central Valley Flood Protection Board	7,828	8,549	2,000	25.5
Services	9,425	9,660	235	2.5
California Energy Resources Scheduling	4,601,388	4,271,583	-329,805	-7.2
Capital Outlay	668,530	489,797	-178,733	-26.7
Administration	65,319	67,155	1,836	2.8
<i>less distributed administration</i>	<i>-65,319</i>	<i>-67,155</i>	<i>-1,836</i>	<i>2.8</i>
Loan Repayment Program	-4,013	-4,013	0	0.0
<b>Total</b>	<b>\$ 7,890,096</b>	<b>\$ 6,265,666</b>	<b>-\$1,624,430</b>	<b>-20.6</b>
<b>Funding Source</b>				
General Fund	\$ 161,324	\$ 129,590	-\$31,734	-19.7
Special Funds	527,896	493,655	-34,241	-6.5
Bond Funds	2,503,681	1,285,720	-1,217,961	-48.7
<i>Budget Act Total</i>	<i>3,192,901</i>	<i>1,908,965</i>	<i>-1,283,936</i>	<i>-40.2</i>
Federal Trust Fund	13,530	13,922	392	2.9
DWR Electric Power Fund	4,601,388	4,271,583	-329,805	-7.2
Bosco-Keene Renewable Resources Investment Fund	20	0	-20	-100.0
Reimbursements	82,257	71,196	-11,061	-13.5
<b>Total</b>	<b>\$ 7,890,096</b>	<b>\$ 6,265,666</b>	<b>-\$1,624,430</b>	<b>-20.6</b>

## 1. Central Valley Flood Protection Board

**Background.** Legislation was enacted in 2007 (AB 5 and SB 17) that renamed the Reclamation Board the Central Valley Flood Protection Board (Board). The Board is required to act independently of the Department of Water Resources and continue to exercise all of its powers, duties, purposes, responsibilities, and jurisdiction. The membership of the Board increased from seven to nine members, seven being appointed by the Governor and subject to Senate confirmation, and two members serving as non-voting ex officio members. Salary of the seven appointed members will be equivalent to the members of the Air Resources Board. Furthermore, AB 162 (Wolk, 2007) requires the Board to review revised safety elements of local governments' general plans prior to the adoption of the amended safety element.

**Budget Act.** The *2009-10 Budget Act* includes \$7.5 million General Fund and \$1 million in Proposition 1E bond funds for support of the Central Valley Flood Protection Board.

**Finance Letter.** The Governor has submitted a spring finance letter that would shift \$2,190,000 General Fund from the Central Valley Flood Protection Board to the Public Safety and Prevention of Damage program.

**Staff Comment.** The Central Valley Flood Protection Board was created in 2007 and received funding for the first time in the *2008-09 Budget Act*. At the time existing staff from within DWR was transferred to the Board because the Board's staffing needs were not fully known. Now some of those staff are being transferred back to DWR through the finance letter proposal.

Despite the fact that the Board has new functions, the Governor appointed the same members to the Board as served on the now-defunct Reclamation Board. Shifting board members from one decision-making entity to another without a Legislative confirmation is not consistent with existing practice of confirming board appointments. Because the Central Valley Flood Protection Board has some new functions that the Reclamation Board did not, it is appropriate for the Board members to answer questions about their decision-making rubric publicly.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the finance letter. Staff also recommends that the Subcommittee adopt trailer bill language requiring the Governor to appoint new members to the Central Valley Flood Protection Board by January 1, 2010, or the Board's budget will be zeroed.

## 2. New and Expanded Requirements for Operating the State Water Project

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP.

**Governor's Budget.** The Governor's January 10 Budget proposed 42 new permanent positions at a cost of \$5,920,000 from State Water Project funds. These positions would work on

improving operational efficiencies, maintaining dependable equipment for the SWP conservation and water delivery system, providing a safe working environment, and protecting SWP facilities from potential threats, while complying with new mandatory regulations, practices, and other requirements related to the department's energy and water operations and responsibilities. The 42 positions break down as follows:

- 15 positions – Energy regulatory requirements for operating the SWP
- 1 position – Aquatic nuisance species
- 1 position – Endangered species analysis and reporting
- 1 position – Facilities performance data management and review
- 10 positions – Installation and data collection for Partial Discharge Analyzer (PDA) systems
- 3 positions – Aging facilities at San Luis Field Division
- 4 positions – Safety and Security of SWP facilities; FERC environmental compliance and monitoring

**LAO Recommendation.** The SWP currently has 1,509 positions. The LAO found that over the past three years, the SWP has added 195 positions mainly for administration, environmental compliance, and legal support. The majority of the positions added over the past three years were added for purposes similar to those described in this proposal, including positions for energy license implementation and environmental compliance. The LAO does not find that the additional requested positions are justified at this time, and therefore recommend that this component of the staffing request be denied.

**Staff Recommendation.** Staff advises the Subcommittee only approve those new positions that the department has demonstrated relate to increased workload. Using this criteria, staff recommends the approval of 19 positions as follows:

- One position for aquatic nuisance species: the spread of the Quagga mussel poses a threat to the water delivery infrastructure within California. In Southern California, the Metropolitan Water District is already expending resources to contain the rapidly reproducing mussel that can block pipes. A position to assist in dealing with the spread of invasive species seems justified to staff given the new threat of the Quagga mussel.
- Three positions for aging facilities at San Luis Field Division: the SWP administrators at DWR inform staff that the San Luis Field Division is experiencing an increasing amount of maintenance as facilities age. The concern is that at times some facilities are left without maintenance staff available to deal with issues. The U.S. Bureau of Reclamation will cover 45 percent of the cost of these three positions.
- 15 positions for energy regulatory requirements for operating the SWP: due to CAISO market redesign, the SWP will have to deal with a new type of spot-market for energy purchases that will be more complex than the three-tier market it previously operated under. Also, the need to purchase more renewable energy and FERC relicensing of some facilities creates additional energy-related workload for the SWP.

### 3. State Water Project Climate Change Energy Activities

**Reid Gardner.** The Reid Gardner power plant is located in Nevada. The plant burns coal for energy. The plant became operational in 1965 and Unit No. 4 was added on in 1983. The Department of Water Resources (DWR) State Water Project (SWP) leases Unit No. 4 of the Reid Gardner plant. With the passage of the California Global Warming Solutions Act of 2006 (AB 32, Nunez) DWR had to find ways to reduce its carbon footprint. The SWP is the largest single customer for electricity in California, and thus reducing the carbon emissions of the electricity purchased would help DWR meet its carbon reduction goals. DWR's contract with Reid Gardner will end in 2013, and DWR has formally notified the power plant that the contract will not be renewed.

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP.

**Governor's Budget.** The Governor's January 10 Budget proposed nine new permanent positions at a cost of \$1,705,000 from State Water Project funds. The proposed positions would work on:

- Phasing out use of cold power supplied from Reid Gardner Plant Unit No. 4, and replacing it with other less carbon-intensive resources.
- Replace fossil fuel use and increase energy efficiency in SWP operations.
- Reduce energy and water consumption through DWR's statutory and regulatory authority and through disbursement of bond funds.
- Report to the Legislature on the annual carbon footprint of DWR's total operations.

**LAO Recommendation.** The LAO finds that the budget proposal has not justified why existing SWP staff working on energy-related matters could not be utilized for this proposal by redirecting their focus to increasing SWP's use of renewable energy. Consequently, the LAO recommends rejection of these positions.

**Staff Analysis.** Legal and environmental concerns around ending the Reid Gardner power contract warrant oversight to ensure minimum state liability and on schedule contracting for less carbon intensive energy takes place. Staff thinks a position to ensure this process takes place reasonably is warranted.

As part of proposal number four, "New and Expanded Requirements for Operating the State Water Project" staff recommended approving 15 new energy-related positions. These positions should be trained to consider the carbon output of the energy that is purchased, so that greenhouse gas considerations become a part of the department's routine operations. Additional positions to deal with only carbon output are not necessary.

**Staff Recommendation.** Staff recommends that the Subcommittee approve one legal position to address the decommissioning of the Reid Gardner power contract.

## 4. Delta Habitat Conservation and Conveyance Program – Initial Phase Support

**Delta Habitat Conservation and Conveyance Program.** The Delta Habitat Conservation and Conveyance Program (DHCCP) was created in June 2008 to support planning, environmental, right of way, and engineering activities, as well as the potential construction of habitat restoration and conveyance facilities in line with the ongoing efforts of the Bay Delta Conservation Plan.

**CALFED Conveyance Program.** The goal of the Conveyance Program is to identify and implement water conveyance modifications in the Delta that will: (1) improve water supply reliability for in-Delta and export users; (2) support continuous improvement in drinking water quality; and (3) complement the Delta ecosystem.

**Budget Act.** The *2009-10 Budget Act* includes no new positions for the State Water Project (SWP) per Control Section 4.12. The SWP funds are off-budget, but the Legislature must approve all new positions for the SWP. The *2009-10 Budget Act* also does not include any bond funds for the Delta Habitat Conservation and Conveyance Program.

**Governor's Budget.** The Governor's Budget proposes 11 permanent positions, eight temporary positions, and \$180,000 in Proposition 13 bond funds. The funds break down as follows:

- Delta Habitat and Conveyance Program: 11 new permanent positions and six temporary positions to be funded from State Water Project Funds for a total of \$2,630,000. These positions would work on Delta water conveyance and alternative conveyance issues, including supporting planning, environmental, right-of-way, engineering, and construction activities.
- CALFED Conveyance Program: \$180,000 in Proposition 13 bond funds and two temporary positions to support the South Delta Fish Facility Improvement Projects. These positions would work on a fish collection, handling, transportation, and release study. These positions would also then work on implementing the study's findings.

**LAO Recommendation.** The LAO argues that activities proposed for funding directly benefit both the Central Valley Project and SWP water contractors, as they are part of a larger conservation planning effort intended to provide greater regulatory certainty to water exporters and thus greater reliability of water supplies. The LAO recommends that this funding request be rejected, on the basis that the activity's direct beneficiaries (the state and federal water contractors) should pay for the activity, rather than state funds.

**Staff Recommendation.** Staff thinks it is premature to begin engineering, right-of-way, and construction activities on a new Delta conveyance plan until the planning process is completed. Thus, staff recommends that the Subcommittee reject the State Water Project positions (11 permanent, six temporary). Staff recommends rejection of the CALFED conveyance program's two positions and funds.

## 5. South Delta Improvement Project

**Water Diversions.** The State Water Project (SWP) currently diverts water from the Delta at Clifton Court Forebay. This diversion is permitted through water rights permits contingent on meeting water level and water quality criteria in south Delta channels. Low water levels can create problems for farmers in the south Delta, who, under low water conditions are unable to divert water for irrigation.

**Salmon.** Salmon smolts migrate down the San Joaquin River in the spring, and can be pulled into the SWP and Central Valley Project (CVP) water pumps. Water diversions that pull small salmon into the pumps prevent those salmon from reaching the sea and impact the salmon population numbers. Ongoing declines of salmon and other fish species has resulted in a federal court issuing a Cease and Desist order for water diversion reductions at the SWP and CVP facilities.

**South Delta Improvement Project.** The South Delta Improvement project would construct permanent operable gates to control water flows at four locations: Middle River, Old River near Tracy, Grantline Canal, and Old River near the San Joaquin River. The department is proposing to share project costs with the federal government, but no federal funds have been secured for the project at this point.

**Budget Act.** The *2009-10 Budget Act* does not include funds for the South Delta Improvement Project.

**Governor's Budget.** The Governor's budget proposed \$29,400,000 from bond funds (\$26,600,000 from Proposition 13 and \$2,800,000 from Proposition 50) for the South Delta Improvement Project.

**Staff Comment.** The cost-effectiveness of the South Delta Improvement Project depends upon how the Legislature decides to handle water conveyance in the Delta and how Delta environmental restoration is pursued. If an alternative water conveyance facility is constructed, the South Delta Improvement Project may become obsolete. It may be prudent to spend these funds on other projects that could have a longer beneficial impact.

**Staff Recommendation.** Staff recommends that the Subcommittee reject the budget proposal.

## 6. Sutter Bypass East Borrow Canal Water Control Structures project

**Project.** The purpose of this project is the replace two water control structures, Weir No. 2 and Willow Slough Weir, which are located along the East Borrow Canal of the Sutter Bypass. The structures are part of the State Plan of Flood Control. The weirs allow the Department of Water Resources to control water levels in the East Borrow Canal for irrigation purposes.

**Project Addition.** The additional funds requested would cover an increase in project costs resulting from changes in foundation designs, environmental mitigation requirements, and access requirements for adjacent property owners. The department asserts that without additional funding, the State would continue to expose itself to potential liability resulting from flooding, crop loss, and injuries. In addition, the State could also be subjected to criminal liability as a result of “take” of species under the protection of the Endangered Species Act.

**Previous Appropriations.** Previous budget acts have provided \$11 million for this project.

**Finance Letter.** The Governor has submitted a spring finance letter requesting \$3,992,000 in Proposition 1E bond fund and 7.2 existing positions to complete the replacement of two hydraulic control structures in the East Borrow Canal of the Sutter Bypass.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the finance letter.

## 7. CALFED General Fund Reductions

**LAO Recommendation.** The *2009-10 Budget Act* includes a total of \$14 million from the General Fund for CALFED. Of this amount, about one-half (\$7.2 million) is for CALFED program oversight of various state agencies. The majority of the remaining funding is allocated to the Department of Water Resources (DWR) for a variety of specific CALFED programs. The General Fund contribution in each of these DWR-administered programs is only three percent of the total state funds (including bond funds and SWP funds) that are spent on these programs.

The LAO’s analysis indicates that the CALFED programs in DWR proposed to receive General Fund support may have merit and work towards achieving CALFED’s goals. Most of the programs proposed for General Fund support, such as the Delta levees subventions program, have existed in some form or another prior to the creation of CALFED. In the intervening years since these programs began, however, multiple funding sources in addition to the General Fund have become available to support them. This includes substantial increases in available bond funds, many of which are allocated specifically to CALFED. Now, the General Fund contributes less than three percent overall to these CALFED programs.

In light of the magnitude of the state’s General Fund fiscal problems, the LAO thinks that it is a good time for the Legislature to reconsider whether DWR’s CALFED activities warrant continued General Fund support. The LAO believes such a reassessment of priorities is reasonable, given the level of support available to CALFED from other funding sources (approximately \$225 million for 2009-10). The LAO therefore recommends that CALFED’s base General Fund budget be reduced by \$5.9 million by reducing or eliminating General Fund support in two programs: Delta levees and water use efficiency.

*Delta Levees: \$4.9 Million General Fund Savings.* The budget allocates \$4.9 million from the General Fund for levee maintenance and repairs within the Delta. This program pertains to levees outside of the state’s Central Valley flood control system, mainly Delta islands, that are operated by local reclamation districts. While improving these levees has some merit, the need



to continue to stabilize levees on many islands in the Delta is currently being assessed as the department evaluates alternatives for Delta conveyance. Therefore, it is uncertain whether preserving these levees will remain a priority for state funding. The availability of other fund sources (mainly bond funds) means that General Fund support can be eliminated without significantly impacting the program.

*Water Use Efficiency: \$1 Million General Fund Savings.* The General Fund provides \$1.4 million of the nearly \$27 million budgeted for CALFED water use efficiency programs, mostly from bond funds. Of the \$1.4 million, about \$1 million is allocated to the California Irrigation Management Information System (CIMIS), a program operated jointly with the University of California, Davis, intended to assist irrigators in managing their water resources efficiently. The LAO is concerned that the original purpose of the program, agricultural water efficiency, has been changed. Many of the 6,000 registered users of the system are not irrigators, but are water agencies, researchers, educators, and water consultants. In the LAO's view, General Fund support for the water use efficiency program can be reduced by \$1 million without significantly impacting the original program scope. The remaining \$350,000 of the General Fund support is used for review of urban water conservation plans, a high-priority activity for which an alternative funding source is not likely to be available.

**Staff Comment.** These cuts were discussed at the April 23, 2009, Subcommittee 2 hearing. The \$1 million General Fund for Water Use Efficiency represents the entire CALFED water use efficiency program, and it may not be prudent to eliminate these funds in the midst of a drought.

For the Delta Levees program, \$1 million General Fund is needed for administrative costs related to levee projects started prior to the passage of the 2006 bond acts.

**Staff Recommendation.** Staff recommends that the Subcommittee reduce the Delta Levees budget by \$3.9 million General Fund.

## 8660 Public Utilities Commission

**Background.** The California Public Utilities Commission (PUC) is responsible for the regulation of privately-owned "public utilities," such as gas, electric, telephone, and railroad corporations, as well as certain video providers and passenger and household goods carriers. The commission's primary objective is to ensure adequate facilities and services for the public at equitable and reasonable rates. The commission also promotes energy conservation through its various regulatory decisions.

**Budget Act.** The 2009-10 Budget Act includes \$1.36 billion to support the PUC. This is approximately \$165 million more than estimated expenditures in the current year. This is due to growth in the various programs for low-income assistance from natural gas to telephone service. The commission does not receive any General Fund support.

<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
Regulation of Utilities	\$ 568,505	\$ 700,177	\$131,672	23.2
Universal Service Telephone Programs	606,791	638,749	31,958	5.3
Regulation of Transportation	20,869	22,425	1,556	7.5
Administration	29,123	28,507	-616	-2.1
<i>less distributed administration</i>	-29,123	-28,507	616	-2.1
<b>Total</b>	<b>\$ 1,196,165</b>	<b>\$ 1,361,351</b>	<b>\$165,186</b>	<b>13.8</b>
<b>Funding Source</b>				
Special Funds	1,176,097	1,337,187	161,090	13.7
<i>Budget Act Total</i>	<i>\$ 1,176,097</i>	<i>\$ 1,337,187</i>	<i>\$161,090</i>	<i>13.7</i>
Federal Trust Fund	1,284	1,284	0	0.0
Reimbursements	18,784	22,880	4,096	21.8
<b>Total</b>	<b>\$ 1,196,165</b>	<b>\$ 1,361,351</b>	<b>\$165,186</b>	<b>13.8</b>

### 1. Energy Efficiency Savings

**Role of Energy Efficiency in California.** Current statute requires the electric and gas utilities to rely on energy efficiency savings as the first resource to meet customer demand. The utilities

must achieve all cost-effective energy efficiency before building new power plants, before signing new natural gas supply contracts, and before building new electric or natural gas transmission lines.

California's utilities have been working on energy efficiency measures since the 1970s. However, as part of the greenhouse gas reductions for AB 32, the utilities must increase their energy efficiency gains. The Public Utilities Commission (PUC) established a new three-year energy efficiency program and portfolio planning process for energy efficiency for the 2006 to 2008 period and authorized the utilities to spend \$2.1 billion in ratepayer funds on programs expected to achieve savings sufficient to avoid the need to build three new 500 MW power plants. This is approximately a \$500 million annual increase over what the utilities previously invested into energy efficiency measures.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Governor's Budget.** The Governor's Budget proposed \$461,000 from the Public Utilities Commission Utilities Reimbursement Account for four positions to work on energy efficiency goals.

- Two positions for Statewide Energy Efficiency Strategic Plan implementation, coordination, and ongoing revisions and updates.
- Two positions for evaluation, measurement, and verification (EM&V) of energy savings.

**Staff Analysis.** The utilities will receive incentive payments or financial penalties depending on how well they meet their energy efficiency goals. Thus, it is important that the calculations for energy efficiency gains be as accurate as possible. The two positions for measurement and verification of energy savings will help assure accurate financial incentives and planning for AB 32 goals.

The increase in funds used for energy efficiency gains at the utilities' level warrants some oversight and planning assistance from the PUC. The increased workload justifies two additional positions.

As part of the energy efficiency work, the utilities will hire contractors to perform building renovations. These contractors will in turn train workers in "green collar" jobs. Though such training is appropriate for independent contractors to perform, staff thinks that the PUC should not become involved in job training as that is not a part of the PUC's mission. Thus staff recommends that the Subcommittee consider provisional language to specify that the PUC will not plan career training programming or include career training in the evaluation criteria for projects.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal with the following provisional language:

The Public Utilities Commission shall not directly engage in workforce education and training curriculum development as part of the Commission's energy efficiency programs.

## 2. Outside Legal Counsel and Economic Consulting

**Energy Crisis.** The California energy crisis of 2000 and 2001 resulted from spot market manipulation allowed for by flawed power market design. The California energy market had been partially deregulated, allowing for market manipulation by energy companies. During the crisis the state government, through the Department of Water Resources, had to step in to purchase power, and 56 contracts totaling \$42 billion were signed. The utilities themselves bought over \$11 billion in energy contracts. The highly variable power prices of the time led to the overcharging of California's consumers by as much as billions of dollars.

**Case History.** In 2003, Federal Energy Regulatory Commission (FERC) determined that it could not modify the long-term contracts merely on the grounds that the contracts did not satisfy the requirement of the Federal Power Act that all rates be "just and reasonable," and that evidence of market manipulation was irrelevant. The PUC appealed FERC's decision to the Ninth Circuit Court of Appeals, which reversed FERC and found in the PUC's favor. In late 2008, the United States Supreme Court upheld the Ninth Circuit's ruling. The case has now been sent back to the FERC, where the PUC must defend the interest of California consumers.

The case for modifying long-term contracts was also litigated by the Electricity Oversight Board (EOB) before the EOB was defunded in the *2008-09 Budget Act* through the Governor's veto. The EOB was using outside counsel and expert witnesses for its litigation. The responsibility for litigating the case is now shifting mainly to the PUC.

**Governor's Budget.** The Governor's Budget proposes \$2.5 million from the Public Utilities Commission Utilities Reimbursement Account for outside legal and economic consultants.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this item.

**Staff Analysis.** The refunds sought for consumers in this proceeding are estimated in excess of \$1.4 billion. The funds for economic and legal counsel to allow California to recoup those overcharges are relatively small compared to the benefits of a successful settlement.

**Staff Recommendation.** Staff recommends that the Subcommittee approve the proposal.

## 3. Independent Monitoring of CAISO

**MRTU.** The California Independent System Operator (CAISO) has implemented a new market design called the "Market Redesign and Technology Upgrade" (MRTU) in March 2009. The MRTU aligns California's electricity market with wholesale market designs throughout North America. The MRTU establishes an integrated forward market with day ahead trading; a full network model that "sees" bottlenecks before schedules actually run; provide for locational marginal pricing, which allows least cost decisions about how to fix bottlenecks; and puts new computer systems in place.

California utilities supervised by the CPUC must buy a substantial portion of the power needed to serve customers on the wholesale power market at market-based rates. The California Public Utilities Commission (PUC) is required to analyze market data and make appropriate recommendations about the proper functioning of newly-designed competitive wholesale markets both at the CAISO and in Federal Energy Regulatory Commission (FERC) proceedings.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Governor's Budget.** The Governor's Budget proposed \$174,000 from the Public Utilities Commission Utilities Reimbursement Account for two positions to: 1) monitor the California Independent System Operator (CAISO) market after the implementation of MRTU, and 2) effective oversight of the utilities' \$11 billion annual procurement of energy and capacity.

**Staff Analysis.** The Electricity Oversight Board (EOB), which was defunded in 2007-08, served as the oversight entity for the CAISO. Now that the EOB is no longer functioning, those oversight tasks are appropriate to move to another agency. However, staff disagrees that the PUC is the appropriate entity to oversee the CAISO due to a conflict of interest with the PUC's ratemaking capacity. The PUC should not oversee an entity to which it makes recommendations. Also, the Governor's proposed energy reorganization would place the CAISO oversight role in the proposed California Department of Energy. It may be best for the Subcommittee to allow the decision on oversight to move through the policy process.

**Staff Recommendation.** Staff recommends that the Subcommittee reject the proposal.

## 3360 Energy Resources Commission

**Background.** The Energy Resources Conservation and Development Commission (commonly referred to as the Energy Commission or CEC) is responsible for forecasting energy supply and demand; developing and implementing energy conservation measures; conducting energy-related research and development programs; and siting major power plants.

**Budget Act.** The 2009-10 Budget Act includes \$370 million to support CEC. The proposed budget is approximately ten percent less than estimated expenditures in the current year due to a reduction in the Public Interest Research, Development, and Demonstration Fund (PIER). The department does not receive any General Fund support.

<b>Summary of Expenditures</b>					
<i>(dollars in thousands)</i>					
	2008-09	2009-10	\$ Change	% Change	
<b>Type of Expenditure</b>					
Regulatory and Planning	\$ 27,779	\$ 32,444	\$4,665	16.8	
Energy Resources Conservation	50,837	30,993	-19,844	-39.0	
Development	339,796	310,435	-29,361	-8.6	
Policy, Management, and Administration	20,967	21,690	723	3.5	
<i>less distributed administration</i>	-20,967	-21,690	-723	3.5	
<i>less loan repayments</i>	-3,873	-3,970	-97	2.5	
<b>Total</b>	\$ 414,539	\$ 369,902	-\$44,637	-10.8	
<b>Funding Source</b>					
Special Funds	386,353	310,454	-75,899	-19.6	
<i>Budget Act Total</i>	\$ 386,353	\$ 310,454	-75,899	-19.6	
Federal Trust Fund	22,366	53,628	31,262	139.8	
Reimbursements	5,820	5,820	0	0.0	
<b>Total</b>	\$ 414,539	\$ 369,902	-\$44,637	-10.8	

## 1. Energy Efficiency and Conservation

**Energy Independence and Security Act of 2007.** The Energy Independence and Security Act of 2007 is a federal bill that created the Energy Efficiency and Conservation Block Grants. The purpose of these grants is to reduce energy costs, greenhouse gas and criteria pollutant emissions, total energy use, and improve energy efficiency in buildings. The Act provided \$560 million annually for five years for these grants to be administered by state governments. The funds are divided between the 50 states based on a formula. It is estimated that California will receive approximately \$34 million.

**AB 2176.** AB 2176 (Caballero, 2008) requires that of the Energy Efficiency and Conservation grant funds California will receive, a minimum of 60 percent be used to provide cost-effective grants to cities with a population less than 35,000 or counties with a population less than 200,000. AB 2176 also limits the administrative costs for the program to five percent.

**Large Cities and Counties.** Those cities and counties with populations larger than 35,000 or 200,000, respectively, are able to apply for energy efficiency funds directly from the federal government. Also, depending on the guidelines that the Energy Commission develops, larger cities and counties may be eligible for the forty percent of funds that the Energy Commission will distribute based on the guidelines that will be developed.

**Guidelines.** The Energy Commission is currently developing guidelines for the distribution of the energy efficiency funds. The Energy Commission has discretion on how to allocate forty percent of the federal energy efficiency funds that it will administer. The guidelines for this forty percent will be completed in July 2009.

**Budget Act.** The *2009-10 Budget Act* includes no funds for this proposal.

**Governor's Budget.** The Governor's Budget proposed \$34 million from federal funds. \$703,000 of these funds would pay for five positions and travel costs.

**Staff Comment.** Additional federal funds for energy efficiency became available for California with the passage of the American Recovery and Reinvestment Act (ARRA) of 2009 in February 2009. The Energy Commission estimated that the ARRA funds the Energy Commission will receive will be approximately \$15.6 million.

**Staff Recommendation.** Staff recommends that the Subcommittee augment the proposal to reflect the additional federal funds the Energy Commission is likely to receive in the fall of 2009. Staff recommends an approval of \$49.6 million in federal fund expenditure authority and the five positions requested.

## 8570 Department of Food and Agriculture

**Background.** The California Department of Food and Agriculture (CDFA) provides services to both producers and consumers of California's agricultural products in the areas of agricultural protection, agricultural marketing, and support to local fairs. The purpose of the agricultural protection program is to prevent the introduction and establishment of serious plant and animal pests and diseases. The agricultural marketing program promotes California's agricultural products and protects consumers and producers through the enforcement of measurements, standards, and fair pricing practices. Finally, the department provides financial and administrative assistance to county and district fairs.

**Budget Act.** The *2009-10 Budget Act* provides \$405 million to support CDFA. This is approximately \$89 million more than the level of expenditures estimated in the current year. This growth is primarily due to capital outlay expenditures.



<b>Summary of Expenditures</b>				
<i>(dollars in thousands)</i>	<b>2008-09</b>	<b>2009-10</b>	<b>\$ Change</b>	<b>% Change</b>
<b>Type of Expenditure</b>				
Agricultural Plant and Animal Health; Pest Prevention; Food Safety Services	\$ 179,216	\$ 169,402	-\$9,814	-5.5
Marketing; Commodities and Agricultural Services	61,232	60,158	-1,074	-1.8
Assistance to Fair and County Agricultural Services	26,121	26,090	-31	-0.1
General Agricultural Activities	43,084	58,182	15,098	35.0
Capital Outlay	4,887	89,833	84,946	1738.2
Executive, Management, and Administration Services	19,427	19,400	-27	-0.1
<i>less distributed administration</i>	-17,940	-17,987	-47	0.3
<b>Total</b>	<b>\$ 316,027</b>	<b>\$ 405,078</b>	<b>\$89,051</b>	<b>28.2</b>
<b>Funding Source</b>				
General Fund	\$ 98,014	\$ 98,355	\$ 341	0.4
Special Funds	157,354	239,594	82,240	52.3
<i>Budget Act Total</i>	<i>\$ 255,368</i>	<i>\$ 337,949</i>	<i>82,581</i>	<i>32.3</i>
Federal Trust Fund	47,221	54,099	6,878	14.6
Harbors and Watercraft Revolving Fund	3,513	3,508	-5	-0.1
Reimbursements	9,925	9,522	-403	-4.1
<b>Total</b>	<b>\$ 316,027</b>	<b>\$ 405,078</b>	<b>\$89,051</b>	<b>28.2</b>

## 1. Agricultural Products Marketing Committees

**Authorization.** The marketing programs are authorized under the California Marketing Act of 1937 and individual sections of statute in the Food and Agricultural Code. State law requires that the California Department of Food and Agriculture oversee all State marketing programs. Each marketing program is governed by a board made up of industry members. Some boards also have public members.

Marketing programs are industry initiated and usually do not go into effect without approval by an industry vote. Since all industry members stand to gain from a marketing program's activities, all affected producers and/or handlers of each commodity are required to abide by the marketing program's statutory provisions and share the cost of funding the program's activities.

**Purpose.** The purpose of marketing programs is to provide agricultural producers and handlers an organizational structure, operating under government sanction, which allows them to solve production and marketing problems collectively that they could not address individually. Current marketing programs' activities include commodity promotion, research, and maintenance of quality standards. Some of the programs carry out all three authorized activities while others carry out only one or two, depending on the needs of each respective industry. None involve volume control and cooperative price establishment (which is specifically prohibited by law). These organizations provide a structure for solving problems and also provide a vehicle for collecting funds to support activities.

**Audit Cycles.** The California Department of Food and Agriculture (CDFA) received some complaints from industry members over the expenditures of specific marketing programs. Spot audits found problems with both the Tomato Commission and the Avocado Commission, both of which have now been disbanded. The CDFA is instituting a four-year audit cycle. This is in addition to the internal audits that the marketing committees perform.

**Staff Recommendation.** No recommendation. Informational item only.